BONG TJHIN OI v. YONG CHIANG

[O.C.J. (Gill F.J.) October 1, 1972]

[Muar — Civil Suit No. 115 of 1969]

Landlord and Tenant — Recovery of possession — Rebuilding of building — Whether building completed after prescribed date — Control of Rent Act, 1966, s. 4(2)(a).

In this case the plaintiff claimed possession of shophouse premises which had been let to the defendants. The shophouse was originally built before the war but was looted and burnt during the Japanese occupation. The shophouse was later rebuilt in 1950. The whole of the old foundation of the former building, its side wall and rear wall up to a certain height were retained but the rest of the building was entirely new.

Held: the shophouse in the present case was completed after the prescribed date that is, 31st January 1948, so as to take it out of the provisions of the Control of Rent Act and the plaintiff was therefore entitled to delivery of possession of the premises.

Cases referred to:-

(1) *Kai Nam* v. *Ma Kam Chan* [1956] A.C. 359.

(2) *Eastern Realty Co. Ltd.* v. *Chan Hua Seng* [1967] 2 M.L.J. 195.

(3) *Tioh Kooi Lan* v. *Ismailjee* [1972] 1 M.L.J. 65, 67.

CIVIL SUIT.

Chua Jui Leng (*Chin Hon Ngian* with him) for the plaintiff.

G. R. T. Chelvam for the defendants.

Gill F.J.: This is an action for the recovery of possession of shophouse premises at No. 50, Jalan Abdullah, Muar, which were let to the defendants by the plaintiff's predecessor in title on November 1, 1963 at a monthly rent of $170. The plaintiff duly determined the tenancy on August 31, 1968 by a notice to quit dated July 17, 1968 which was served on the defendants on the same day.

One of the defences raised by the defendants was that the notice to quit was bad in law, because the plaintiff as the present owner of the premises had given no notice of change of ownership to the defendants. That defence was abandoned when the following facts as contained in the agreed bundle of documents (Exhibit AB1) were pointed out to counsel for the defendants. The plaintiff by her letter dated June 28, 1968 notified the defendants that the premises at No. 50, Jalan Abdullah, Muar had been purchased by her, and asked them to shift as she required the premises. On July 6, 1968 she sent another letter to the defendants to say that the premises had been sold to her, and that in case they were unable to shift to a suitable premises within a short time the monthly rent with effect from July, 1968 would be $480 to be paid before the 5th of every month. The defendants' solicitors by their letter of July 9, 1968 in reply to plaintiff's letter of June 28, 1968 stated that their clients had noted that the plaintiff had purchased the premises and sent money order for $170 being the rent for the month of July, 1968.

A point taken in the defence was that the notice to quit sent by the plaintiff described the purported owner as a man (Mr. Bong Tjhin Oi), whereas the writ and the statement of claim referred to Bong Tjhin Oi as a woman. There was obviously no merit in that point as it was the defendants' solicitors who addressed their letter of July 9, 1968 to Mr. Bong Tjhin Oi, presumably in the mistaken belief that the plaintiff was a man.

The only other defence raised is that the premises in question are governed by the Control of Rent Act, 1966, because they were erected before the 31st day of January, 1948, even though repairs and renovations were made later, so that no order or judgment for the recovery of possession can be made or given except in any of the cases specified in sections 16 and 18 of the Act.

It is common ground that the original shophouse on the same site as the present premises was built some time before the last war. According to the evidence produced by the defence, that shophouse, together with some other shophouses in the same row, was looted just before the Japanese troops entered Muar, and the looters set fire to some of the buildings. A witness on behalf of the plaintiff has testified that when he first moved into premises No. 44, Jalan Abdullah, Muar in September, 1948, there was no shophouse at No. 50, Jalan Abdullah. It was an empty space and there were no walls left standing. This witness has further testified that he can remember the shophouse at No. 50, Jalan Abdullah being re-built in 1950.

What was left of the old shophouse is best described by Mr. Khein Seng Chye, a building contractor, who was employed by the then owner of what was left of the shophouse to re-build the present premises on the site of the old shophouse and the adjoining shophouse which belonged to the same owner and was similarly burned down. His evidence, which I have no reason to doubt, is that the side walls of the old shophouse were merely charred and not otherwise affected. The front wall being the strongest part of the building had collapsed and was no longer there, but only the top portion of the rear wall had crumbled and fallen to the ground. For the re-building of the two shophouses he charged the owner a sum of $16,750.

It would seem clear that in building the shophouse in question almost the whole of the old foundation of the former building, its side walls and rear wall up to a certain height were retained, but the rest of the building was entirely new. In the circumstances, the facts of this case are not very different from the facts in the Hong Kong case of *Kai Nam* v. *Ma Kam Chan*(1) which was followed by Wee Chong Jin C.J. in the Singapore case of *Eastern Realty Co. Ltd.* v. *Chan Hua Seng*.(2) In the Hong Kong case their Lordships of the Privy Council held —

> "Where the damage had been so extensive that repair was impossible, when there was nothing left which could possibly be called a building, then the existence of that building as such was terminated and a building replacing it would be an entirely new building even though it was built on the same foundations and had the same floor as the old one. The words 'entirely new' in section 3(1)(a) were used in relation to the building and not to the materials of which it was composed, and the correct test to be applied was whether the old building was so far beyond repair that it could no longer be said to exist as a building."

For premises to be exempt from rent control under the law of Hong Kong, they have to be "any entirely new building" Under the equivalent Singapore

law they have to be "any new building" built or completed after the prescribed date. Section 4(2)(a) of our Control of Rent Act, 1966 speaks of "building completed after 31st January, 1948". If in the Hong Kong case the shops built on the old foundation of the former building were held to be "entirely new" and in the Singapore case to be a "new building", a fortiori the shophouse in the present case was completed after the prescribed date so as to take it out of the provisions of the Control of Rent Act, 1966.

It is to be observed that in this case there was no shophouse on the site from about the beginning of 1942 until June, 1950 when a certificate of fitness for occupation in respect of the new building was issued. During all those years there was no subsisting tenancy in respect of any premises on the site. To that extent this case differs from the case of *Tioh Kooi Lan* v. *Ismailjee*[3] in which Ali F.J. said:

"Before the fire and after the repairs and alterations to the front portion were completed the tenant remained in occupation and presumably paying the same rent as before. In other words, he was holding on to his tenancy regardless of what had happened."

It is therefore clear that the defendants can seek no protection under the Control of Rent Act, 1966.

In the Hong Kong case their Lordships of the Privy Council agreed with the Hong Kong courts that the respondent was not estopped by having served a notice of increase of rent purporting to be made under the Ordinance and receiving such increased rent. In the present case the plaintiff did serve a notice of increase of rent but there is no evidence that any increased rent has been paid in pursuance of that notice. Indeed, from the time the plaintiff became owner she has refused to accept any rent which, in the circumstances, the defendants have been obliged to pay into court. Thus, the fact that the plaintiff issued a notice of increase of rent does not prejudice her claim to possession.

There being no dispute about the tenancy of the defendants having been duly terminated, the plaintiff is entitled to judgment as prayed in the amended statement of claim. Accordingly, the order of this court will be that the defendants do give vacant possession of the premises on or before 31st December, 1972, that they pay a sum of $340 by way of arrears of rent, and that as from September 1, 1968 to date of delivery of possession they pay double rent by way of mesne profits. There will also be an order that they pay the costs of the action.

Judgment for the plaintiff.

Solicitors: *Yeow & Chin; Chelvam & Co.*

WOON HOE KAN & SONS SDN. BHD. v. BANDAR RAYA DEVELOPMENT BHD.

[O.C.J. (Harun J.) November 11, 1972]

[Kuala Lumpur — Civil Suit No. 153 of 1971]

Contract — Overdue payment — Interest — Contracts (Malay States) Ordinance, 1950, s. 74.

This was a claim for interest on overdue payments. At an earlier hearing ([1971] 2 M.L.J. 213 and [1972] 1 M.L.J. 75, F.C.) the plaintiffs were given leave to sign final judgment for $860,165.17 for work done and the defendants were given unconditional leave to defend the claim in respect of interest for overdue payments. The plaintiffs claimed that interest was 10.8% per annum on monthly rests but the defendants contended that there was no agreement as to the rate of interest payable.

Held: (1) on the evidence there was no contractual rate of interest payable;

(2) in the absence of a contractual rate, the plaintiffs were only entitled to a reasonable rate of interest. A reasonable rate is one which the plaintiffs would have enjoyed as income if the money was paid in time. In all the circumstances of this case, a rate of 5% per annum at simple interest was reasonable.

CIVIL SUIT.

Edgar Joseph Jr. for the plaintiffs.

V. C. George for the defendants.

Harun J.: This is a claim for interest on overdue payments.

At an earlier hearing, [1971] 2 M.L.J. 213 and [1972] 1 M.L.J. 75, F.C., the plaintiffs were given leave to sign final judgment for $860,165.17 for work done and the defendants were entitled to unconditional leave to defend the claim in respect of interest for overdue payments.

The amount for work done is the balance due under two contracts in writing dated 5 July 1966 and 7 July 1967 in respect of certain civil engineering works carried out by the plaintiffs in connection with the development of Bandar Raya off Jalan Bungsar, Kuala Lumpur.

The two contracts provide that the plaintiffs shall submit to the engineer appointed by the defendants before the end of each month a statement of the estimated contract value up to date. The engineer will issue a certificate of permanent work done as he considers reasonable subject to a retention as stated in the conditions of the contract.

The contracts further provide that the defendants shall pay to the plaintiffs the amounts stated to be due by the engineer within 14 days of the issue of the certificate. In both contracts there is a provision that in the event the defendants fail to pay to the plaintiffs the amount due under any certificate of the engineer within 30 days after the same shall have become due, the plaintiffs shall be entitled without prejudice to any other rights or remedies to determine the employment of the plaintiffs under the contract by giving notice in writing to the defendants. But in neither contract is there a provision that interest is payable if payment is not made within 14 days on any certificate becoming due.